

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 173 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

YUSUFKHAN ALIAS KELA JANKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 10th November, 1998, made by the Commissioner of Police, Surat City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are found to be prejudicial to the maintenance of public order. Three offences punishable under the Chapter-XVII of the IPC are registered against the petitioner and are pending investigation. Besides, two individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and more particularly about the incidents that occurred on 14th July, 1998 and 20th August, 1998. It is alleged that the activities of the petitioner disturb the public tranquility and the even tempo of life.

The only ground on which the order of detention is challenged is the long delay in making the order of detention from the date of cause of action. It is alleged that the last of the offences was registered against the petitioner on 21st August, 1998, however, the order of detention has been made as late as on 10th November, 1998. The delay has snapped the link between the cause of action and the action. Such delay should be fatal to the order of detention. It is argued that no undue delay has been made in passing the order of detention, nor the delay, if any, has snapped the link between the cause of action and the action. It is stated that the last of the offences was registered on 3rd September, 1998. The petitioner was arrested on 8th September, 1998 in respect of the earlier offences. He was released on bail in each of the said three cases on 11th September, 1998. For some time, the investigation was in progress and, therefore, the proposal for detention was made on 30th October, 1998. The Detaining Authority having received the proposal, summoned the witnesses before him and after examining the witnesses on 9th November, 1998, the Detaining Authority has made the order on 10th November, 1998. Moreover, the statements of the witnesses were recorded on 27th and 28th September, 1998.

I am unable to agree with the contention raised by Mr. Patel. It is apparent that the statements of the witnesses were recorded soon after the petitioner was released on bail on 11th September, 1998. However, the proposal was not made by the sponsoring authority till 30th October, 1998. This period from 11th September, 1998 to 30th October, 1998, has not been explained by the

sponsoring authority. In view of the prevailing judicial pronouncements, such unexplained delay should vitiate the continued detention of the detenu.

Petition is, therefore, allowed. The order dated 10th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI